

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Federal-State Joint Board on Universal Service |) | CC Docket No. 96-45 |
| |) | |
| Western Wireless Corp. |) | |
| Petition for Agreement With Redefinition of |) | |
| Service Areas of Certain Rural Incumbent |) | |
| Local Exchange Carriers in the State of |) | |
| Minnesota Pursuant to 47 C.F.R. § 54.207(c) |) | |
| |) | |

**WESTERN WIRELESS CORPORATION
PETITION FOR AGREEMENT WITH REDEFINITION OF SERVICE AREAS OF
CERTAIN RURAL ILECs IN THE STATE OF MINNESOTA**

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September 15, 2004

TABLE OF CONTENTS

| | Page |
|---|------|
| SUMMARY | ii |
| I. BACKGROUND | 1 |
| II. DISCUSSION | 7 |
| A. The Minnesota PUC's Redefinition of the Service Areas of Certain Rural ILECs is Consistent with Federal Universal Service Policy | 7 |
| B. The Requested Redefinition Satisfies the Joint Board's Factors Under Section 214(e)(5) of the Act | 9 |
| 1. Agreeing to this Redefinition Will Not Result in the Effects of Cream Skimming | 9 |
| 2. Agreeing to this Redefinition Will Not Affect the Unique Status of Rural ILECs | 12 |
| 3. Agreeing to this Redefinition Will Not Create Any Administrative Burdens | 13 |
| III. CONCLUSION | 14 |
| Exhibit A: Minnesota PUC's August 19, 2004 Order Approving Petition for ETC Designation | |
| Exhibit B: Western Wireless' February 12, 2004 Verified Petition for Designation as an Eligible Telecommunications Carrier and Redefinition of Rural Telephone Company Service Area Requirement for Certain Service Areas | |
| Exhibit C: Minnesota Department of Commerce April 12, 2004 Supplemental Comments | |
| Exhibit D: Western Wireless' June 8, 2004 Second Supplemental Filing – Summary of Study Area Population Density – Minnesota | |

SUMMARY

Western Wireless Corporation, on behalf of its subsidiary WWC Holding Co., Inc. d/b/a/ CellularOne® (collectively, "Western Wireless"), hereby seeks the Commission's concurrence, pursuant to 47 C.F.R. § 54.207(c), with the redefinition of the service area requirement approved by the Minnesota Public Utilities Commission ("Minnesota PUC") in connection with its grant of eligible telecommunications carrier ("ETC") status to Western Wireless.

On August 19, 2004, the Minnesota PUC granted Western Wireless' application for ETC designation throughout portions of its commercial mobile radio services ("CMRS") licensed service areas in Minnesota where it had not previously been designated as an ETC. The Minnesota PUC found that the public interest would be served by designating Western Wireless as an ETC in all of the requested service areas of rural incumbent local exchange carriers ("ILECs"). To effectuate the designations in certain rural ILEC study areas that Western Wireless did not serve in their entirety, the Minnesota PUC granted Western Wireless' request, pursuant to 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b), to redefine the service areas of these companies from the study area to the wire center level.

As shown below, the Minnesota PUC's conclusion to redefine the service areas to the wire center level as part of its ETC designation was consistent with federal law and with the Commission's regulations and decisions. Redefinition of the service area requirement for these rural ILEC areas is necessary to further the universal service goals of the Telecommunications Act of 1996. Western Wireless respectfully requests that the Commission grant its assent with the Minnesota PUC's proposed redefinition of these rural ILEC service areas, pursuant to Section 54.207(c), so that Western Wireless may provide universal service as an ETC to these Minnesota rural consumers.

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Western Wireless respectfully requests the Commission's concurrence, pursuant to 47 C.F.R. § 54.207(c), with the redefinition of the service areas of certain rural ILECs,¹ approved by the Minnesota Public Utilities Commission ("Minnesota PUC") in connection with its grant of eligible telecommunications carrier ("ETC") status to Western Wireless. As demonstrated in this Petition, the Minnesota PUC's decision to redefine the service area requirement to the wire center level was consistent with federal law and with the Commission's regulations and decisions. The public interest will be served by the Commission's prompt concurrence.

I. BACKGROUND

Carriers that receive designation as ETCs pursuant to Section 214(e) of the Telecommunications Act of 1996 (the "Act") are required to provide and advertise certain specified services throughout the "service area" for which they have been designated. 47 U.S.C.

¹ All ETCs receive support for a specific "service area" and, for incumbent rural local exchange carriers ("ILECs"), the default service area is the study area. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a)-(b). The Rules provide for the redefinition of this service area requirement in cases of competitive ETC designations. 47 C.F.R. § 54.207(c). Such redefinition does not change the incumbent rural LEC's study area.

§ 214(e)(1). For support purposes, the service area of an ETC subject to the authority of a state commission is defined by the state commission in the designation process consistent with federal law. 47 U.S.C. § 214(e)(5). There are no restrictions on a state's definition of an ETC applicant's service areas in areas served by a non-rural ILEC, but in an area served by a rural ILEC, the applicant's service area is generally defined as the rural ILEC's "study area," unless and until the Commission and the state commission both agree to redefine that requirement. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b); *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 172 n.434 (1997) ("*Universal Service First Report and Order*"), *subsequent history omitted*.

The Commission also has long recognized that requiring a new telecommunications provider, especially a wireless provider, to conform its designated service area to the study area of the ILEC may give the ILEC an unfair advantage. *Universal Service First Report and Order*, ¶ 185. The Commission promulgated 47 C.F.R. § 54.207 to avoid such anti-competitive results. Section 54.207 of the rules permits a state commission to designate ETCs for a service area that differs from the rural ILEC's study area, and provides that such designations will take effect subject to agreement by the Commission. In making and agreeing to such designations, the Commission and the state commission each must give full consideration to the Joint Board's recommendations and explain their rationale for adopting the alternative service area. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b); *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, ¶ 9 (2004) ("*Virginia Cellular*"). The Joint Board recommended three factors that are to be considered by the state commission and the Commission when determining the

appropriateness of redefining the service area requirement for an ETC applicant in a rural ILEC's study area: "(1) minimizing cream skimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level."²

As discussed in more detail below, the Minnesota PUC considered each of the factors, and its determination to grant the proposed redefinition is consistent with each of the factors. On August 5, 2004, the Minnesota PUC issued an order ("*Order*") granting Western Wireless' February 12, 2004 petition for designation as a federal ETC and for redefinition of the service area requirement where necessary.³ The Minnesota PUC found that Western Wireless was fully qualified to be designated as an ETC, and its designation as an additional ETC in areas served by rural ILECs was in the public interest. *Order*, pp. 6-8. To effectuate the designation in the rural ILEC study areas that Western Wireless did not serve in their entirety, the Minnesota PUC

² *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, ¶ 41 (2004) ("*Virginia Cellular*"), citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, ¶¶ 172-74 (Joint Board 1996).

³ *Petition by WWC Holding Co., Inc. d/b/a CellularOne for Designation as an Eligible Telecommunications Carrier and Redefinition of Rural Telephone Company Service Area Requirement*, MPUC Docket No. P-5695/M-04-226, Order Approving Petition for ETC Designation, (Aug. 19, 2004) ("*Order*") (attached hereto as Exhibit A). See also *WWC Holding Co., Inc. d/b/a CellularOne® Petition for Designation as an Eligible Telecommunications Carrier and Redefinition of Rural Telephone Company Service Area Requirement*, Verified Petition for Designation as an Eligible Telecommunications Carrier and Redefinition of Rural Telephone Company Service Area Requirement for Certain Service Areas (Feb. 12, 2004) ("*February 2004 Petition*") (attached hereto as Exhibit B). By filing this petition, Western Wireless sought to expand the scope of its ETC status to additional areas in Minnesota beyond those for which it had been designated as an ETC in 2000. *Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, MPUC Docket No. P5695/M-98-1285, Order Granting Preliminary Approval and Requiring Further Filings (Oct. 27, 1999); *WWC Holding Co., Inc. f/k/a Minnesota Cellular Corporation for Designation as an Eligible Telecommunications Carrier*, MPUC Docket No. P5695/M-98-1285, Order Accepting Compliance Filing, Requiring Further Filing, and Transferring Authority to Successor Corporation (Apr. 19, 2000).

determined that the service area requirement should be redefined to a wire center basis in the areas for which Western Wireless requested designation. *Order*, p. 9.

The Minnesota PUC is well versed in the requirements for redefinition of the service area requirement pursuant to 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207. Prior to Western Wireless' petition, the Minnesota PUC had analyzed and granted requests for service area redefinition for other competitive ETCs.⁴ This Commission has previously agreed with the Minnesota PUC's determination to redefine the service area requirement in one instance,⁵ and petitions are currently pending before this Commission seeking agreement with the Minnesota PUC's determination to redefine the service area requirement in the other instances.⁶

As discussed in more detail below, the Minnesota PUC correctly concluded that Western Wireless was qualified under the Act for designation as an ETC in the non-rural exchanges and rural ILEC service areas that it served in their entirety. *Order*, p. 8. For the rural ILEC service areas that Western Wireless did not serve in their entirety, the Minnesota PUC granted

⁴ *Petition of Cellular Mobile Systems of St. Cloud Requesting Designation as an Eligible Telecommunications Carrier*, Docket No. PT-6201/M-03-1618, Order (May 6, 2004) ("*Cellular Mobile Order*"); *Petition of RCC Minnesota, Inc. and Wireless Alliance, LLC for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. § 214(e)(2)*, MPUC Docket No. PT-6182, 6181/M-02/1503, Order Granting Conditional Approval and Requiring Additional Filings, (Jul. 31, 2003) ("*RCC Order*"); *Petition of Midwest Wireless Communications, LLC, for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. § 214(e)(2)*, MPUC Docket No. PT-6153/AM-02-686, Order Granting Conditional Approval and Requiring Additional Filings, (Mar. 19, 2003) ("*Midwest Wireless Order*") (collectively, the "*Redefinition Orders*").

⁵ *The Minnesota Public Utilities Commission Petitions for Agreement to Redefine the Service Area of Frontier Communications of Minnesota, Inc.*, CC Docket No. 96-45, Public Notice, DA 00-2661 (rel. Nov. 29, 2000) (because no other action was taken within 90 days after the Public Notice, the definition proposed by the Minnesota PUC was deemed approved).

⁶ *Wireline Competition Bureau Initiates Proceeding to Consider the Minnesota Public Utilities Commission Petition to Redefine Rural Telephone Company Service Areas in the State of Minnesota*, CC Docket No. 96-45, Public Notice, DA 03-3594 (rel. Nov. 7, 2003) (regarding the *Midwest Wireless Order*); *Wireline Competition Bureau Seeks Comment on Petitions to Redefine Certain Rural Telephone Company Study Areas in Wisconsin and Minnesota*, CC Docket No. 96-45, Public Notice, DA 04-2063 (rel. Jul. 8, 2004) (regarding the *Cellular Mobile Order*); *Wireline Competition Bureau Seeks Comment on Petitions to Redefine Certain Rural Telephone Company Study Areas in Minnesota*, CC Docket No. 96-45, Public Notice, DA 04-2911 (rel. Sept. 9, 2004) (regarding the *RCC Order*).

conditional ETC designation, and required that Western Wireless seek the Commission's consent to redefine the service area requirement to the full wire center level. *Id.*, pp. 9-10. Set forth below is a listing of the areas in which Western Wireless was designated as an ETC contingent on the Commission's concurrence with the proposed redefinition:⁷

| <u>Company Name</u> | <u>Wire Center Name</u> | <u>Prior Minnesota PUC Order Granting Redefinition</u> |
|------------------------------------|--|--|
| CenturyTel of MN Inc. ⁸ | Baudette Brewster Dundee Fairfax Fulda Gibbon Humboldt Heron Lake Jeffers Lafayette Lamberton Minneota Round Lake Renville Roseau Rushmore Wilmont Warroad Westbrook | <i>Midwest Wireless Order; RCC Order</i> |
| Federated Tel. Coop. | Milan | <i>Midwest Wireless Order; RCC Order</i> |
| KMP Tel. Co. | Danube Pennock | |
| Loretel System, Inc. | Ada Glyndon Perley | |
| Mid-State Tel. Co. | New London Spicer | <i>Midwest Wireless Order; RCC Order</i> |
| Sleepy Eye Tel. Co. | Hanska Sleepy Eye | |

⁷ The *Order* incorporates by reference and relies upon Attachment 2 to the *February 2004 Petition* to identify the areas where redefinition to the full wire center is sought. *Order*, p. 9. Attachment 2 to the *February 2004 Petition* is reproduced above.

⁸ The CenturyTel of MN Inc. ("CenturyTel") wire centers listed on Attachment 2 to the *February 2004 Petition* inadvertently included the Luverne wire center. That wire center is not assigned to CenturyTel, and redefinition is not sought for it.

| <u>Company Name</u> | <u>Wire Center Name</u> | <u>Prior Minnesota PUC Order Granting Redefinition</u> |
|------------------------------------|--|--|
| Twin Valley -Ulen Tel. Co. Inc. | Flom Gary Twin Valley Waubun | |
| Sprint – Minnesota, Inc. | Buffalo Lake Brownton Cologne Cokato Dassel Glencoe Granite Falls Grove City Howard Lake Lester Prairie Norwood New Richland Plato Silver Lake St. James Stewart Waldorf | <i>Midwest Wireless Order; RCC Order</i> |

Four of the eight rural ILEC service areas in which Western Wireless sought and received ETC designation had already been subject to redefinition by the Minnesota PUC in its *Redefinition Orders*.⁹

The Minnesota PUC's decision to redefine the service area requirement to the wire center to effectuate Western Wireless' ETC designation was made only after careful review. Only a few months ago, this Commission reiterated that a State commission's "first-hand knowledge of the rural areas in question uniquely qualifies it to examine the redefinition proposal and determine whether it should be approved." *Federal-State Joint Board on Universal Service, Highland*

⁹ Once a rural telephone company's study area has been redefined for the purpose of designating a competitive ETC under 47 C.F.R. § 54.207, a second, duplicative, redefinition analysis should be unnecessary if another competitive ETC seeks designation in the redefined areas of the rural telephone company. The most logical reading of Section 54.207 is that redefinition need only be considered once for each rural telephone company. Accordingly, if the Commission approves the redefinition of the CenturyTel, Federated Tel. Coop., Mid-State Tel. Co., and Sprint-Minnesota, Inc. ("Sprint") rural telephone company study areas in the previous proceedings arising from the *Redefinition Orders*, redefinition of those rural company study areas should not be needed in this proceeding.

Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37, ¶ 2 (rel. Apr. 12, 2004) ("*Highland Cellular*"). The Minnesota PUC's first-hand knowledge of the circumstances of Minnesota rural ILECs and other carriers should thus be given significant weight as the Commission addresses the service area redefinition request made herein.

It should also be noted that the service area redefinition request made herein does not involve any partial wire center redefinition. *Order*, pp. 5, 9. The Commission addressed partial wire center redefinition in *Highland Cellular*, ¶ 33. The concerns addressed in *Highland Cellular* are not present in this Petition because, as the Minnesota PUC determined, all of the wire centers for which Western Wireless is seeking redefinition are located entirely within its licensed boundaries.

II. DISCUSSION

A. The Minnesota PUC's Redefinition of the Service Areas of Certain Rural ILECs is Consistent with Federal Universal Service Policy.

Congress declared its intent in passing the 1996 amendments to the Act:

To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

Pub. L. No. 104-104, 110 Stat. 56 (1996) (emphasis added). Consistent with its pro-competitive goals, the Act specifically contemplates the designation of multiple ETCs, including in areas served by rural ILECs, consistent with the public interest. 47 U.S.C. § 214(e)(2). The Commission has long recognized that requiring a new telecommunications provider, especially a wireless provider, to conform its designated service area to the study area of the ILEC may give the ILEC an unfair advantage. *Universal Service First Report and Order*, ¶ 185. That is particularly so in this instance, because portions of the Minnesota rural ILEC study areas lie

outside the Western Wireless' licensed CMRS boundaries. Redefinition will enable Western Wireless to bring new services and new technologies to customers of Minnesota's rural ILECs, who currently have little or no meaningful choice of universal service providers.

The Commission has also previously determined that redefinition of the service area requirement facilitates local competition and promotes the universal service goals of the Act by enabling new providers to provide universal service based on licensed areas. *Virginia Cellular*, ¶¶ 40-45; *Highland Cellular*, ¶¶ 37-42; *see also Washington Utilities & Transportation Commission, et al., Petition for Agreement With Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas of the Purpose of Distributing Portable Federal Universal Service Support*, CC Docket No. 96-45, Memorandum Opinion and Order, 15 FCC Rcd 9921, ¶ 8 (Com. Car. Bur. 1999). The Commission has specifically emphasized the need for deference to state commissions' determinations, given their unique qualifications to assess the facts relating to whether requests for redefinition should be granted. *See Highland Cellular*, ¶ 2.

The Commission also has stated a policy favoring redefinition in instances where a rural carrier's study area is large and/or non-contiguous. The Commission has expressly urged state commissions to explore redefinition for purposes of ETC designations where a competitive ETC or wireless carriers might not be able to provide facilities-based service throughout a rural company's entire study area. *Universal Service First Report and Order*, ¶ 190. The Commission has also cautioned that requiring a new entrant to serve a non-contiguous service area as a prerequisite to ETC eligibility would impose a "serious barrier to entry, particularly for wireless carriers" and would be "particularly harmful to competition in rural areas, where wireless carriers could potentially offer service at much lower costs than traditional wireline service." *Id.*

The proposed redefinition in this proceeding will foster needed competition in rural areas of Minnesota. Redefining the service area requirement for purposes of defining the ETC service areas will enable Western Wireless to offer competitive universal services to the customers of these rural ILECs, some of whose study areas are large and non-contiguous.¹⁰ This effort at facilitating competition furthers the goals of the Act and this Commission. *See Virginia Cellular*, ¶ 38. Importantly, the Minnesota PUC has employed its unique position and expertise in analyzing the telecommunications market in Minnesota and determined that redefinition of the service area requirement for purposes of Western Wireless' ETC designation will benefit Minnesota consumers while at the same time not harming Minnesota rural ILECs. *Order*, p. 9. Therefore, the Commission should agree to the redefinition of the service areas consistent with the Minnesota PUC's determinations in this proceeding.

B. The Requested Redefinition Satisfies the Joint Board's Factors Under Section 214(e)(5) of the Act.

As noted above, the Commission has identified three factors initially recommended by the Joint Board which should be considered when determining the appropriateness of redefining a rural ILEC's service area. *See, e.g., Highland Cellular*, ¶¶ 38-41 (applying Joint Board's recommended factors). The Minnesota PUC properly considered each of these factors based on the record evidence and correctly determined that redefinition of the service area requirement to the wire center level in this instance is consistent with these factors. *Order*, p. 9.

1. Agreeing to this Redefinition Will Not Result in the Effects of Cream Skimming.

The first factor is the risk that the applicant is selectively seeking designation in only the low-cost, high-support areas in the rural ILEC's study area, a practice referred to as "cream

¹⁰ CenturyTel's and Sprint's study areas are both large, each encompassing more than twenty wire centers. CenturyTel's and Sprint's study areas also both include non-contiguous wire centers.

skimming." The Minnesota PUC's determination to redefine the service area to the wire center level expressly considered cream skimming concerns. The Minnesota PUC reviewed the record before it and concluded "there was no evidence showing that Western Wireless was proposing to serve only the low-cost areas of any carrier's study areas to the exclusion of the high-cost areas." *Order*, p. 9. Thus, the Minnesota PUC found no evidence of intentional cream skimming since Western Wireless sought designation for all wire centers contained within its Minnesota licensed area.

Moreover, the Minnesota PUC concluded that no effects of cream skimming would result from the proposed redefinition. The Minnesota PUC based its conclusion on an analysis of the rural LECs' costs of providing service. Specifically, the Minnesota Department of Commerce ("DOC") independently performed an analysis of the rural ILECs costs of serving the wire centers in the service areas in which Western Wireless sought designation. The DOC found "no evidence that the costs to serve customers in the wire centers in which [Western Wireless] proposes to serve as an ETC, are significantly different from, the costs in those wire centers which [Western Wireless] proposes to exclude from its service area."¹¹ Based on the DOC's analysis of the rural ILECs' costs, the Minnesota PUC stated, "The Commission recognizes and accepts the DOC's conclusion, based on the DOC's analysis of the costs of serving wire centers in the service areas in which Western Wireless is seeking ETC designation, that granting Western Wireless' request would not create significant opportunities for cream skimming." *Order*, p. 9.

Not only did the Minnesota PUC evaluate costs, but also Western Wireless provided a population density analysis of the rural ILEC areas for determining whether any effects of cream

¹¹ The DOC's analysis was set forth in a supplemental filing to the Minnesota PUC dated April 12, 2004 (attached hereto as Exhibit C).

skimming might occur. Using publicly available information regarding the area and population of each wire center, Western Wireless calculated the population density per square mile for the areas in which it was seeking ETC designation and for the areas in which it was not seeking ETC designation.¹² The results of the population density analysis confirmed there were no potential effects of cream skimming resulting from Western Wireless' redefinition request. Specifically, in four of the study areas (Loretel Systems, Inc.; Sleepy Eye Telephone Co.; Twin Valley-Ulen Telephone Co., Inc.; and United Telephone Co. of Minnesota), the population density was slightly lower in the areas in which Western Wireless was seeking ETC designation as compared to the areas in which Western Wireless was not seeking designation. In the remaining four study areas (CenturyTel; Federated Telephone Cooperative; KMP Telephone Co.; and Mid-State Telephone Co.), the population density was slightly higher in the areas in which Western Wireless was seeking designation. However, the variations in population density were not statistically significant for any of the study areas.

The Minnesota PUC further noted that three of the companies (Federated Telephone Cooperative, Mid-State Telephone Co., and Sleepy Eye Telephone Co.) in whose service areas Western Wireless was designated as an ETC had already filed plans to disaggregate their high-cost support. *Order*, p. 7. By targeting support to the higher and lower cost areas, the risk of cream skimming is eliminated because the amount of support a competitive ETC receives in the wire centers it serves is based on the targeted amount available to the incumbent. 47 C.F.R. § 54.307. Moreover, targeting of support remains an option to the rural LECs that have not already filed to do so. *See Virginia Cellular*, ¶ 35, fn 112; 47 C.F.R. § 54.315. A rural LEC's

¹² Western Wireless submitted the population density analysis of the rural ILEC study areas for which redefinition was sought to the Minnesota PUC on June 8, 2004 (attached as Exhibit D).

choice not to target support indicates that the rural LEC does not perceive cream skimming to be a concern within its study area.¹³

Thus, there is neither the intention to cream skim nor any effects of cream skimming raised by the Commission's concurrence in the Minnesota PUC's redefinition decisions.

2. Agreeing to this Redefinition Will Not Affect the Unique Status of Rural ILECs.

The second factor to consider is the impact on the rural ILECs whose service areas are to be redefined. The Minnesota PUC's determination to redefine the service area requirement in this proceeding is consistent with the Commission's findings in this regard. As the Commission recently concluded in *Virginia Cellular*:

[O]ur decision to redefine the service areas of the affected rural telephone companies includes special consideration for the affected rural carriers. Nothing in the record convinces us that the proposed redefinition will harm the incumbent rural carriers. The high-cost universal service mechanisms support all lines served by ETCs in rural areas.¹³⁰ Under the Commission's rules, receipt of high-cost support by Virginia Cellular will not affect the total amount of high-cost support that the incumbent rural telephone company receives.¹³¹ Therefore, to the extent that Virginia Cellular or any future competitive ETC captures incumbent rural telephone company lines, provides new lines to currently unserved customers, or provides second lines to existing wireline subscribers, it will have no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve.¹³² Similarly, redefining the service areas of the affected rural telephone companies will not change the amount of universal service support that is available to these incumbents.

Virginia Cellular, ¶ 43.

Nothing in the service area redefinition process for an ETC applicant affects a rural carrier's statutory exemptions from interconnection, unbundling and resale requirements under

¹³ See *Application of N.E. Colorado Cellular, Inc. to Re-Define the Service Area of Eastern Slope Rural Telephone Association, Inc., Great Plains Communications, Inc., Plains Coop Telephone Association, Inc. and Sunflower Telephone Co., Inc.*, Docket No. 02A-444T, Decision Denying Exceptions and Motion to Reopen Record, Decision No. C03-1122, 38 (Aug. 27, 2003) (stating that decision of rural carriers not to target support "is probative evidence of the carriers' lack of concern with cream skimming.")

Section 251(c). Redefining the rural ILEC service area requirement as requested herein will not compromise or impair the unique treatment of these companies as rural ILECs under Section 251(f) of the Act. Even after the service area requirement is redefined for purposes of ETC designations, the companies will still retain the statutory exemptions from interconnection, unbundling and resale requirements under Section 251(c).

Additionally, the redefinition process does not affect the way in which the rural ILECs calculate their embedded costs or the amount of per-line support they receive. "Under the Commission's rules, receipt of high-cost support by [a competitive ETC] will not affect the total amount of high-cost support that the incumbent rural telephone company receives." *Virginia Cellular*, ¶ 43; *see also Highland Cellular*, ¶ 40. Rather, the redefinition process only modifies the service area requirement for an incumbent's service area for purposes of designating a competitive ETC. Thus, the incumbent carriers will retain their unique regulatory status as rural ILECs under the Act consistent with the Joint Board's recommendations.

Consistent with this analysis, the Minnesota PUC determined that the redefinition would not affect the unique status of rural ILECs, finding that "there was no evidence of any effect of redefinition on the rural carriers' regulatory status." *Order*, p. 9.

Accordingly, the Commission's agreement with the Minnesota PUC's determination that rural ILEC study areas should be redefined as requested herein will have no effect on the unique status enjoyed by Minnesota rural ILECs under the Act.

3. Agreeing to this Redefinition Will Not Create Any Administrative Burdens.

The third and final factor to consider is whether any administrative burdens might result from the redefinition of the service area requirement. A rural ILEC's universal service support payments are currently based on a rural company's embedded costs determined at the study area

level. *Universal Service First Report and Order*, ¶ 189. As the FCC concluded in *Virginia Cellular*,

[R]edefining the rural telephone company service areas as proposed will not require the rural telephone companies to determine their costs on a basis other than the study area level. Rather, the redefinition merely enables competitive ETCs to serve areas that are smaller than the entire ILEC study area. Our decision to redefine the service areas does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis, nor, as a practical matter, the manner in which they will comply with these rules. Therefore, we find that the concern of the Joint Board that redefining rural service areas would impose additional administrative burdens on affected rural telephone companies is not at issue here.

Virginia Cellular, ¶ 44. For the same reasons, redefinition of the service area requirement here will not impose any administrative burdens nor have any other effects on the rural ILECs, and so the third factor is satisfied.

The Minnesota PUC's determination to redefine the service area in this proceeding is also consistent with this last factor. The Minnesota PUC expressly noted that redefinition will result in "no additional administrative burdens placed on local exchange carriers as a result of such redefinition of the service area." *Order*, p. 9.

III. CONCLUSION

For the reasons stated herein, Western Wireless respectfully requests that the Commission concur with the Minnesota PUC's conclusion that the service areas of the specified rural ILECs be redefined to the wire center level, as discussed above.

Dated: September 15, 2004

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